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11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 (SAN FRANCISCO DIVISION)

14 CITY OF OAKLAND, CALIFORNIA, a Municipal  
 15 Corporation, on behalf of itself and all others  
 15 similarly situated,

16 Plaintiffs,

17 v.

18 AIG FINANCIAL PRODUCTS CORP., *et al.*,

19 Defendants.

Case No. CV-08-02116-JSW

**CLASS ACTION**

**NOTICE OF ERRATUM**

21 Please take notice that Plaintiff in the above-captioned action submits this Notice  
 22 of Erratum to correct an error in Paragraph 20(e) of Plaintiffs' Complaint (Doc. No. 1, filed on  
 23 April 23, 2008). The names of two defendants with similar names were transposed.  
 24 Paragraph 20(e) refers to Defendant Feld Winters, but should refer to Defendant Winters & Co.  
 25 The corrected Paragraph 20(e) reads:

26 BOA has also been implicated in a bid-rigging and kickback  
 27 scheme involving a large GIC that BOA sold to the City of Atlanta  
 28 in 2002 that also involved Derivative Broker Defendants CDR and  
 Winters & Co. as well as Derivative Seller Defendants UBS and  
 Piper Jaffray.

1 Attached to this Notice of Erratum is a Corrected Complaint, which reflects this change, but is  
2 otherwise identical to the Complaint filed on April 23, 2008.

3 Respectfully submitted,

4 Dated: May 8, 2008

5 By: /s/ Eric B. Fastiff  
Eric B. Fastiff

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## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

23 CITY OF OAKLAND, CALIFORNIA, a Municipal  
 Corporation, on behalf of itself and all others  
 24 similarly situated,

25 Plaintiff,

26 v.

27 AIG FINANCIAL PRODUCTS CORP.; AIG  
 SUNAMERICA LIFE ASSURANCE CO.; BANK  
 28 *(caption continued on next page)*

Case No.

**[CORRECTED] COMPLAINT FOR  
VIOLATIONS OF THE SHERMAN  
ACT, THE CARTWRIGHT ACT,  
AND THE UNFAIR  
COMPETITION LAW**

**CLASS ACTION**

1 OF AMERICA CORPORATION; BANK OF  
 2 AMERICA, N.A.; BEAR STEARNS  
 3 COMPANIES, INC.; CAIN BROTHERS &  
 4 COMPANY, LLC; CDR FINANCIAL  
 5 PRODUCTS, INC.; FELD WINTERS  
 6 FINANCIAL, LLC; FINANCIAL GUARANTY  
 7 INSURANCE CO.; FINANCIAL SECURITY  
 8 ASSURANCE HOLDINGS, LTD.; FIRST  
 9 SOUTHWEST COMPANY; GE FUNDING  
 10 CAPITAL MARKET SERVICES, INC.;  
 11 GENWORTH FINANCIAL, INC.; GEORGE K.  
 12 BAUM & COMPANY; INVESTMENT  
 13 MANAGEMENT ADVISORY GROUP, INC.;  
 14 JPMORGAN CHASE & CO.; JPMORGAN  
 15 CHASE BANK, N.A.; KINSELL NEWCOMB &  
 16 DE DIOS, INC.; LEHMAN BROTHERS INC.;  
 MERRILL LYNCH & CO. INC.; MORGAN  
 KEEGAN & CO., INC.; MORGAN STANLEY;  
 NATIONAL WESTMINSTER BANK plc;  
 NATIXIS, S.A.; PACKERKISS SECURITIES,  
 INC.; PIPER JAFFRAY & CO.; SECURITY  
 CAPITAL ASSURANCE, INC.; SHOCKLEY  
 FINANCIAL CORP.; SOCIÉTÉ GÉNÉRALE;  
 SOUND CAPITAL MANAGEMENT, INC.;  
 TRINITY FUNDING COMPANY, LLC; UBS AG;  
 UBS SECURITIES LLC; UBS FINANCIAL  
 SERVICES INC.; WACHOVIA BANK, N.A.;  
 WACHOVIA CORPORATION; WINTERS & CO.  
 ADVISORS, LLC; XL ASSET FUNDING  
 COMPANY 1 LLC; XL CAPITAL, LTD.; and XL  
 LIFE INSURANCE & ANNUITY COMPANY,

17 Defendants.

18  
 19 Plaintiff City of Oakland, California (hereafter "Oakland" or "Plaintiff"),  
 20 individually and on behalf of a class of all those similarly situated, brings this action for treble  
 21 damages under the antitrust laws of the United States against Defendants, demands a trial by jury,  
 22 and alleges the following on information and belief except as to the contents of paragraphs 1 and  
 23 16 which are based on personal knowledge:

24 **NATURE OF THE CASE**

25 1. The City of Oakland, California has issued hundreds of millions of dollars  
 26 of tax-free bonds since 1992 and has purchased Guaranteed Investment Contracts ("GICs") to  
 27 allow Oakland to have funds available while earning a higher rate of return than they would if  
 28 Oakland simply invested the proceeds in a savings account. For example, Oakland issued tax-

1 free municipal bonds to, *inter alia*, rebuild the Oakland Coliseum, modernize its sewer system,  
2 and provide for general obligations.

3                   2.       Oakland alleges a nationwide conspiracy among Defendants to rig bids, to  
4   allocate customers and markets, and to fix, raise, maintain, or stabilize the returns received by  
5   Oakland and the members of the Class for Municipal Derivatives (as defined below), including  
6   but not limited to GICs, sold in the United States.

7                   3.        Oakland brings this action on behalf of itself and all entities that contracted  
8 for Municipal Derivatives in the United States and its territories directly from Municipal  
9 Derivatives Seller Defendants and Municipal Derivatives Broker Defendants, as defined in this  
10 Complaint during the period from January 1, 1992 through December 31, 2007. As a result of  
11 Defendants' unlawful conduct, Oakland and the Class, as defined in this Complaint, have paid  
12 higher supracompetitive prices for these products, and therefore suffered injury to their business  
13 and property.

## **JURISDICTION AND VENUE**

15                   4.         Oakland brings this action pursuant to Section 4 of the Clayton Act,  
16         15 U.S.C. §§ 15, for treble damages, as well as reasonable attorneys' fees and costs of suit, for  
17         Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, the Cartwright Act,  
18         California Business and Professions Code § 16720, *et seq.*, and the California Unfair Competition  
19         Law, Business and Professions Code § 17200, *et seq.*

20                   5.        Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1337, and  
21       1367 and by Section 4 of the Clayton Act, 15 U.S.C. § 15(a).

22                   6.         Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15(a) and  
23                   22 and 28 U.S.C. § 1391(b), (c), and (d) because during the Class Period, one or more of the  
24                   Defendants resided, transacted business, was found, or had agents in this district, and because a  
25                   substantial part of the events giving rise to Oakland’s claims occurred, and a substantial portion  
26                   of the affected interstate trade and commerce described below was carried out in this district.

## **INTRA-DISTRICT ASSIGNMENT**

7. Pursuant to Local Rules 3-5(b) and 3-2(c), this action should be assigned to the San Francisco/Oakland Division based on Oakland's location in the County of Alameda.

## **DEFINITIONS**

8. Bid: As used herein, the term “Bid” means the Rate of Return offered by prospective Municipal Derivatives Sellers during the Competitive Bidding Process for GICs or the competitive processes by which other Municipal Derivatives are purchased by Government Entities.

9. **Competitive Bidding Process:** As used herein, the term “Competitive Bidding Process” means the process mandated by Treasury Regulation §148.5, *et seq.*, and detailed below in Paragraphs 74 through 92, by which at least three Municipal Derivatives Sellers submit Bids to the Municipal Derivatives Broker retained by the Government Entity seeking to purchase a Guaranteed Investment Contract, as that term is defined herein.

10. Government Entity: As used herein, the term “Government Entity” means any state, local or municipal body or any subdivision thereof. Excluded from the definition of Government Entity is any federal government body.

11. Municipal Derivative: As used herein, the term “Municipal Derivative” means a variety of financial instruments that Government Entities use to invest the proceeds of bond offerings while waiting to use bond proceeds for their purposes or to hedge and shift the interest-rate risk associated with the issuance of tax-exempt debt. As used herein, the term Municipal Derivative encompasses all of the following types of transactions:

a. Guaranteed Investment Contract (“GIC”): “Guaranteed Investment Contract” or “GIC” is a security in which a Government Entity contracts with a Municipal Derivative Counterparty, typically an investment bank or bond insurer with an AAA or AA credit rating, to invest the proceeds of a municipal bond offering for a fixed amount of time in exchange for a series of payments at a guaranteed Rate of Return over the life of the contract. A GIC is a Municipal Derivative, and are sometimes characterized as “forward purchase,” “forward delivery” or “repurchase” agreements (typically used for debt service funds), or as “unsecured” GICs

(typically used for capital projects and subject to provisions allowing investment principal to be drawn down pursuant to a set schedule). A GIC is similar to a bond, in that “principal” – the proceeds of a municipal bond issue – is invested in exchange for payment of a certain fixed Rate of Return determined by the terms of the contract.

8 f. Interest Rate Floors and Collars: Interest rate “floors” and “collars”  
9 are agreements in which a Government Entity agrees with a Municipal Derivatives Seller (the  
10 Counterparty) to pay fixed rates of interest on an investment of variable-rate debt, either agreeing  
11 to pay the Counterparty an interest rate at or above a specified rate (a “floor”) or no more or less  
12 than a particular interest rate within range of interest rates (a “collar”).

13                   12. Municipal Derivatives Broker: As used herein, the term “Derivatives  
14                   Broker” means an entity retained by a Government Entity to oversee the processes, including the  
15                   Competitive Bidding Process, pursuant to which Municipal Derivatives are purchased.  
16                   Derivatives Brokers act as fiduciaries of a Government Entity seeking to purchase Municipal  
17                   Derivatives, often acting as swap advisors in addition to overseeing the competitive bidding  
18                   undertaken by the Government Entity for those Municipal Derivatives sold through ostensibly  
19                   competitive means. Derivatives Brokers enjoy mutually symbiotic and incestuous relationships  
20                   with large investment banks and insurance companies, and act as “finders” of municipal securities  
21                   business for the securities dealers or investment banks that often pay kickbacks to the Municipal  
22                   Derivatives Brokers in the form of finders’ fees and monthly retainers.

23                   13. Municipal Derivatives Counterparty: As used herein, the term “Municipal  
24 Derivatives Counterparty” or “Counterparty” means a Municipal Derivatives Seller with whom a  
25 Government Entity contracts for a transaction involving the purchase of one or more of the  
26 Municipal Derivatives described herein.

1                   14. Municipal Derivatives Seller: As used herein, the term “Derivatives Seller”  
 2 means an entity offering to enter into a Municipal Derivative transaction with a Government  
 3 Entity pursuant to the Competitive Bidding Process or other competitive process.

4                   15. Rate of Return: As used herein, the term “Rate of Return” means the fixed  
 5 amount, typically expressed as a percentage of the underlying bond proceeds amount or as a  
 6 specific interest rate, offered by a potential Municipal Derivatives Seller and ultimately received  
 7 by a Government Entity after it enters into the GIC or similar Municipal Derivative transaction  
 8 with a Municipal Derivatives Counterparty. The Rate of Return is an element of the Competitive  
 9 Bidding Process where competition is intended to occur for the benefit of bond issues. It was a  
 10 focus of Defendants’ illegal bid-rigging and customer allocation scheme alleged herein.

11                   **PARTIES**

12                   **Plaintiff**

13                   16. Plaintiff, the City of Oakland, California, is a municipal corporation and a  
 14 Government Entity. Oakland purchased Municipal Derivatives, including from one or more  
 15 Derivatives Seller Defendants pursuant to a Competitive Bidding Process overseen by one or  
 16 more of the Derivative Broker Defendants during the Class Period. Oakland purchased millions  
 17 of dollars’ worth of Municipal Derivatives from one or more of the Derivatives Seller Defendants  
 18 and retained one or more of the Derivatives Broker Defendants to oversee, supervise and manage  
 19 the processes, including the Competitive Bidding Process, undertaken to purchase the Municipal  
 20 Derivatives. As a result of the unlawful conspiracy alleged herein, Oakland was injured in its  
 21 business or property. Oakland has contracted for its GICs with a variety of brokers and  
 22 underwriters, including Bank of America, FSA Management (a subsidiary of Financial Security  
 23 Assurance Holdings, Ltd.) and IXIS Corporate & Investment Banking, on which the Department  
 24 of Justice has served subpoenas as part of its investigation into Municipal Derivative bid-rigging.

25                   **Municipal Derivatives Seller Defendants**

26                   17. Defendant AIG Financial Products Corp. (“AIG Financial”) is a Delaware  
 27 corporation maintaining its principal place of business in Wilton, Connecticut. It is a wholly  
 28

1 owned subsidiary of AIG International Inc. During the Class Period, AIG Financial issued and  
2 sold Municipal Derivatives to Oakland and/or members of the Class in the United States.

3 a. AIG Financial is part of the Capital Markets arm of its parent  
4 company AIG, and raises funds for AIG in part through investment in Municipal Derivatives.

5 b. In November, 2006, AIG Financial received a subpoena from the  
6 Antitrust Division of the United States Department of Justice in connection with its grand jury  
7 investigation into anticompetitive conduct in the Municipal Derivatives business.

8 18. Defendant AIG SunAmerica Life Assurance Co., (“AIG SunAmerica”) is  
9 an Arizona corporation maintaining its principal place of business in Los Angeles, California.  
10 During the Class Period, AIG SunAmerica issued and sold Municipal Derivatives to Oakland  
11 and/or members of the Class in the United States.

12 a. In November, 2006, AIG SunAmerica received a subpoena from  
13 the Securities and Exchange Commission in connection with the SEC’s investigation into  
14 anticompetitive practices in the Municipal Derivatives industry.

15 19. Defendant Bank of America Corporation (“BOA”) is a Delaware  
16 corporation with its principal place of business in Charlotte, North Carolina. During the time  
17 period covered by this complaint, Bank of America was headquartered in San Francisco,  
18 California and conducted substantial business operations in this judicial district. During the Class  
19 Period, BOA issued and sold Municipal Derivatives to Oakland and/or members of the Class in  
20 the United States, either directly or through its wholly-owned subsidiary Defendant Bank of  
21 America, N.A (“BANA”).

22 20. Defendant Bank of America, N.A. (“BANA”), a wholly-owned subsidiary  
23 of Defendant BOA, is a Delaware corporation with its principal place of business in Charlotte,  
24 North Carolina. During the Class Period, BANA issued and sold Municipal Derivatives to  
25 Oakland and/or members of the Class in the United States.

26 a. In November, 2006, BOA received subpoenas from the Antitrust  
27 Division of the United States Department of Justice and the Securities and Exchange Commission  
28

1 in connection with those agencies' investigations into anticompetitive conduct in the Municipal  
2 Derivatives business.

16 d. BOA and BANA are also targets of investigation by the Internal  
17 Revenue Service (“IRS”) in connection with anticompetitive practices in the Municipal  
18 Derivatives industry. In February, 2007, concurrently with its entrance into the DOJ’s Corporate  
19 Leniency agreement covering criminal antitrust violations, BOA entered into an agreement with  
20 the IRS related to BOA’s role in providing GICs and other agreements in connection with certain  
21 “blind pool” municipal bond transactions.

22 e. BOA has also been implicated in a bid-rigging and kickback  
23 scheme involving a large GIC that BOA sold to the City of Atlanta in 2002 that also involved  
24 Derivative Broker Defendants CDR and Winters & Co. as well as Derivative Seller Defendants  
25 UBS and Piper Jaffray.

1       Period, Bear Stearns issued and sold Municipal Derivatives to Oakland and/or members of the  
2       Class in the United States.

3                   a.       The SEC has previously investigated Bear Stearns' municipal  
4       bond department and its municipal bond underwriting practices.

5                   b.       Stephen Salvadore, currently the Senior Managing Director and  
6       Manager of Municipal Capital Markets Derivatives and Investments at Bear Stearns, has  
7       disclosed that he is a target of the grand jury convened in the Southern District of New York by  
8       the Antitrust Division of the Department of Justice investigating antitrust and other violations  
9       related to anticompetitive conduct in the Municipal Derivatives business. Target letters of the  
10      kind received by Salvadore are an indication that the DOJ has substantial evidence of the  
11      commission of a federal crime and typically a sign that the recipient will soon be indicted absent a  
12      plea agreement or cooperation deal.

13                  c.       In addition, at least one former Bear Stearns employee is a target of  
14      both the SEC and the grand jury convened in the Southern District of New York by the Antitrust  
15      Division of the Department of Justice investigating antitrust and other violations related to  
16      anticompetitive conduct in the Municipal Derivatives business.

17                  d.       Patrick Marsh, who worked at Bear Stearns from 2000 to 2005 and  
18      whose last position at the company was Managing Director and Chief of Municipal Structuring,  
19      has disclosed that he was the recipient of a Wells notice from the SEC recommending civil or  
20      administrative action against him in connection with securities violations related to bidding  
21      procedures in the Municipal Derivatives industry during his tenure at Bear Stearns. Marsh also  
22      disclosed that he is a target of the grand jury convened in the Southern District of New York by  
23      the Antitrust Division of the Department of Justice investigating antitrust and other violations  
24      related to anticompetitive conduct in the Municipal Derivatives business. Target letters of the  
25      kind received by Marsh are an indication that the DOJ has substantial evidence of the commission  
26      of a federal crime and typically a sign that the recipient will soon be indicted absent a plea  
27      agreement or cooperation deal. Marsh was also subpoenaed by the SEC in connection with its  
28

1 investigation into wrongdoing associated with municipal bond derivatives transactions in  
2 Jefferson County, Alabama.

3                   22. Defendant Financial Guaranty Insurance Co. (“FGIC”) is a Delaware  
4 corporation maintaining its principal place of business in New York, New York. During the  
5 Class Period, FGIC, a former affiliate of General Electric, issued and sold Municipal Derivatives  
6 to Oakland and/or members of the Class in the United States.

7                   a. FGIC has received a subpoena from the Securities and Exchange  
8 Commission in connection with the SEC’s investigation into anticompetitive practices in the  
9 Municipal Derivatives industry.

10                  23. Defendant Financial Security Assurance Holdings, Ltd. (“FSA Holdings”)  
11 is a New York corporation maintaining its principal place of business in New York, New York.  
12 During the Class Period, FSA Holdings issued and sold Municipal Derivatives to Oakland and/or  
13 members of the Class in the United States, either directly or through its wholly-owned subsidiary  
14 FSA Capital Management Services, LLC, (“FSA Capital”), a Delaware limited liability company  
15 headquartered in New York City.

16                   a. In November, 2006 FSA Holdings received subpoenas from the  
17 Antitrust Division of the United States Department of Justice and the Securities and Exchange  
18 Commission in connection with those agencies’ investigations into anticompetitive conduct in the  
19 Municipal Derivatives business.

20                   b. On February 4, 2008, FSA Holdings received a so-called Wells  
21 notice from the Philadelphia regional office of the SEC, informing the company that the SEC  
22 staff had recommended civil or administrative action against FSA Holdings in connection with its  
23 investigation into anticompetitive practices in the Municipal Derivatives industry. The Wells  
24 notice issued to FSA Holdings related to alleged violations of Section 10(b) of the Securities  
25 Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

26                  24. Defendant First Southwest Company (“First Southwest”) is a Delaware  
27 corporation with its principal place of business in Dallas, Texas. During the Class Period, First  
28

1 Southwest issued and sold Municipal Derivatives to Oakland and/or members of the Class in the  
2 United States.

3 a. First Southwest has received a subpoena from the Securities and  
4 Exchange Commission in connection with the SEC's investigation into anticompetitive practices  
5 in the Municipal Derivatives industry.

6 25. Defendant Genworth Financial, Inc. ("Genworth") is a New York  
7 corporation maintaining its principal place of business at Fairfield, Connecticut. Genworth issued  
8 and sold Municipal Derivatives to Oakland and/or members of the Class in the United States.

9 a. Genworth has received subpoenas from the Antitrust Division of  
10 the United States Department of Justice and the Securities and Exchange Commission in  
11 connection with those agencies' investigations into anticompetitive conduct in the Municipal  
12 Derivatives business.

13 26. Defendant GE Funding Capital Market Services, Inc. ("GE Funding") is a  
14 Delaware corporation maintaining its principal place of business in New York, New York. GE  
15 Funding is a member of the GE Funding Capital Market Services Group (GE Funding CMS).  
16 During the Class Period, GE Funding issued and sold Municipal Derivatives to members of the  
17 Class.

18 27. Defendant JPMorgan Chase & Co. ("JPMorgan") is a Delaware  
19 corporation maintaining its principal place of business in New York, New York. During the  
20 Class Period, JPMorgan issued and sold Municipal Derivatives to Oakland and/or members of the  
21 Class in the United States.

22 a. In November, 2006, JPMorgan received subpoenas from the  
23 Antitrust Division of the United States Department of Justice and the Securities and Exchange  
24 Commission in connection with those agencies' investigations into anticompetitive conduct in the  
25 Municipal Derivatives business.

26 b. At least three former JPMorgan employees are targets of the Justice  
27 Department's grand jury investigation into anticompetitive practices in the Municipal Derivatives  
28 industry.

1 c. Samuel Gruer, who worked at JPMorgan from 1994 through 2006  
2 and whose last position was Vice-President in the Derivatives Marketing unit of the company's  
3 Tax-Exempt Capital Markets Group, has recently disclosed that he is a target of the grand jury  
4 convened in the Southern District of New York by the Antitrust Division of the Department of  
5 Justice investigating antitrust and other violations related to anticompetitive conduct in the  
6 Municipal Derivatives business. Target letters of the kind received by Gruer are an indication  
7 that the DOJ has substantial evidence of the commission of a federal crime and typically a sign  
8 that the recipient will soon be indicted absent a plea agreement or cooperation deal.

16 e. James Hertz, who worked at JPMorgan from 1994 until he was  
17 fired from the firm in January, 2008, has also recently disclosed that JPMorgan informed him that  
18 he was under investigation by the DOJ for what Hertz described as “conduct on the municipal  
19 derivatives marketing desk,” an indication that the investigation involves JPMorgan’s entire  
20 municipal derivatives business, which necessarily includes Municipal Derivatives. Target letters  
21 of the kind received by Hertz are an indication that the DOJ has substantial evidence of the  
22 commission of a federal crime and typically a sign that the recipient will soon be indicted absent a  
23 plea agreement or cooperation deal.

1                   29.     Defendant Kinsell Newcomb & DeDios Inc. (“KND”) is a California  
 2 corporation with its principal place of business in Solano Beach, California. During the Class  
 3 Period, KND issued and sold Municipal Derivatives to Oakland and/or members of the Class in  
 4 the United States.

5                   a.     KND has received subpoenas from the Antitrust Division of the  
 6 United States Department of Justice and the Securities and Exchange Commission in connection  
 7 with those agencies’ investigations into anticompetitive conduct in the Municipal Derivatives  
 8 business.

9                   30.    Defendant Lehman Brothers Inc. (“Lehman Brothers”) is a Delaware  
 10 corporation maintaining its principal place of business in New York, New York. During the  
 11 Class Period, Lehman Brothers issued and sold Municipal Derivatives to members of the Class.  
 12 Lehman is a wholly-owned subsidiary of Lehman Brothers Holdings Inc.

13                  31.    Defendant Merrill Lynch & Co. Inc. (“Merrill Lynch”) is a Delaware corporation  
 14 maintaining its principal place of business in New York, New York. During the Class Period,  
 15 Merrill Lynch issued and sold Municipal Derivatives to members of the Class.

16                  32.    Defendant Morgan Stanley (“Morgan Stanley”) is a Delaware corporation  
 17 maintaining its principal place of business in New York, New York. During the Class Period,  
 18 Morgan Stanley issued and sold Municipal Derivatives to members of the Class.

19                  33.    Defendant National Westminster Bank plc (“NatWest”) is a public limited  
 20 corporation maintaining its principal place of business in London, England. During the Class  
 21 Period, NatWest issued and sold Municipal Derivatives to members of the Class. NatWest is a  
 22 subsidiary of Royal Bank of Scotland.

23                  34.    Defendant Natixis, S.A. (“Natixis”), formerly known as IXIS Corporate &  
 24 Investment Bank and CDC Funding Corp., is a foreign corporation maintaining its principal place  
 25 of business in Paris, France. During the Class Period, Natixis issued and sold Municipal  
 26 Derivatives to Oakland and/or members of the Class in the United States.

27                  a.     In November, 2006, Natixis’ predecessor IXIS Corporate &  
 28 Investment Bank received a subpoena from the Antitrust Division of the United States

1 Department of Justice in connection with its grand jury investigation into anticompetitive conduct  
 2 in the Municipal Derivatives business.

3                   35. Defendant Piper Jaffray & Co. (“Piper Jaffray”) is a Delaware corporation  
 4 with its principal place of business in Minneapolis, Minnesota. During the Class Period, Piper  
 5 Jaffray issued and sold Municipal Derivatives to Oakland and/or members of the Class in the  
 6 United States.

7                   a.       Piper Jaffray has received subpoenas from the Antitrust Division of  
 8 the United States Department of Justice and the Securities and Exchange Commission in  
 9 connection with those agencies’ investigations into anticompetitive conduct in the Municipal  
 10 Derivatives business.

11                   b.       James Towne, employed as Managing Director of Piper Jaffray’s  
 12 municipal derivatives group until January, 2008, recently disclosed that Piper Jaffray informed  
 13 him that he is under investigation by the Antitrust Division of the Department of Justice for  
 14 potential antitrust and other violations relating to the Municipal Derivatives industry.

15                   36. Defendant Security Capital Assurance, Inc. (“Security Capital”) is a  
 16 foreign corporation maintaining its principal place of business in Hamilton, Bermuda. During the  
 17 Class Period, Security Capital, either directly or through its affiliates Defendants XL Capital, Ltd.  
 18 and XL Asset Funding Company 1 LLC, issued and sold Municipal Derivatives to Oakland  
 19 and/or members of the Class in the United States.

20                   37. Defendant Société Générale (“SocGen”) is a French corporation  
 21 headquartered in Paris. During the Class Period, SocGen issued and sold Municipal Derivatives  
 22 to Oakland and/or members of the Class in the United States, either directly or through its wholly-  
 23 owned subsidiaries Société Générale Americas, Inc., a Delaware corporation headquartered in  
 24 New York, New York and/or SG Americas Securities, LLC, a Delaware limited liability  
 25 corporation also headquartered in New York, New York.

26                   a.       SocGen has received a subpoena from the Securities and Exchange  
 27 Commission in connection with the SEC’s investigation into anticompetitive practices in the  
 28 Municipal Derivatives industry.

4           38.     Defendant Trinity Funding Company, LLC (“GE Trinity”) is a New York  
5 limited liability corporation maintaining its principal place of business in New York, New York.  
6 GE Trinity is a member of the GE Funding Capital Market Services Group (GE Funding CMS).  
7 During the Class Period, GE Trinity issued and sold Municipal Derivatives to members of the  
8 Class.

9                   39.     Defendant UBS AG (“UBS”) is a Swiss corporation with its headquarters  
10                  in Basel, Switzerland. During the Class Period, UBS issued and sold Municipal Derivatives to  
11                  Oakland and/or members of the Class in the United States, either directly or through its wholly-  
12                  owned subsidiary, Defendant UBS Securities, LLC (“UBS Securities”).

21 c. Peter Ghavami, until December 2007 the Managing Director and  
22 Co-Manager of Municipal Derivatives at UBS Securities in New York and London, recently  
23 disclosed that he is a target of the grand jury convened in the Southern District of New York by  
24 the Antitrust Division of the Department of Justice investigating antitrust and other violations  
25 related to anticompetitive conduct in the Municipal Derivatives business. Target letters of the  
26 kind received by Ghavami are an indication that the DOJ has substantial evidence of the  
27 commission of a federal crime and typically a sign that the recipient will soon be indicted absent a  
28 plea agreement or cooperation deal.

1                   40.     Defendant UBS Securities LLC, formerly known as UBS Warburg LLC, is  
 2 a Delaware corporation with its principal place of business in New York, New York. It is a  
 3 subsidiary of UBS AG. During the Class Period, UBS Securities issued and sold Municipal  
 4 Derivatives to members of the Class.

5                   41.     Defendant UBS Financial Services Inc. (“UBS Financial”), formerly  
 6 known as PaineWebber Inc., is a Delaware corporation with its principal place of business in New  
 7 York, New York. It is a subsidiary of UBS AG. In 2000, UBS Financial was purchased by  
 8 Defendant UBS AG. During the Class Period, UBS Financial issued and sold Municipal  
 9 Derivatives to members of the Class.

10                  42.     Defendant Wachovia Bank, N.A. (“Wachovia N.A.”) is a North Carolina  
 11 corporation with its principal place of business in Charlotte, North Carolina. During the Class  
 12 Period, Wachovia N.A. issued and sold Municipal Derivatives to Oakland and/or members of the  
 13 Class in the United States.

14                  43.     Defendant Wachovia Corporation (“Wachovia”) is a North Carolina  
 15 corporation with its principal place of business in Charlotte, North Carolina. During the Class  
 16 Period, Wachovia issued and sold Municipal Derivatives to Oakland and/or members of the Class  
 17 in the United States either directly or through its wholly-owned subsidiary Defendant Wachovia  
 18 Bank, N.A. (“Wachovia N.A.”).

19                  a.        In November, 2006, Wachovia received subpoenas from the  
 20 Antitrust Division of the United States Department of Justice and the Securities and Exchange  
 21 Commission in connection with those agencies’ investigations into anticompetitive conduct in the  
 22 Municipal Derivatives business.

23                  b.        Both the DOJ and the SEC have advised Wachovia that they  
 24 believe Wachovia N.A. employees engaged in improper conduct in relation to competitively-bid  
 25 municipal derivatives transactions.

26                  c.        Two Wachovia N.A. employees working in the company’s  
 27 Derivatives Marketing Department, Martin McConnell (the Managing Director of Marketing) and  
 28 Paul Jay Saunders (the Director of Marketing), recently disclosed that they are targets of the

1 grand jury convened in the Southern District of New York by the Antitrust Division of the  
 2 Department of Justice investigating antitrust and other violations related to anticompetitive  
 3 conduct in the Municipal Derivatives business. Target letters of the kind received by McConnell  
 4 and Saunders are an indication that the DOJ has substantial evidence of the commission of a  
 5 federal crime and typically a sign that the recipient will soon be indicted absent a plea agreement  
 6 or cooperation deal. Wachovia recently placed both Saunders – who worked for Defendant Bank  
 7 of America from 1998 through 2003 – and McConnell on administrative leave following their  
 8 disclosure that they were targets of the government’s grand jury investigation.

9                   44. Defendant XL Asset Funding 1, LLC (“XLAF”) is a Delaware limited  
 10 liability corporation maintaining its principal place of business in Schaumburg, Illinois. During  
 11 the Class Period, XLAF issued and sold Municipal Derivatives to Oakland and/or members of the  
 12 Class in the United States.

13                   a.           XLAF received subpoenas from the Antitrust Division of the  
 14 United States Department of Justice and the Securities and Exchange Commission in connection  
 15 with those agencies’ investigations into anticompetitive conduct in the Municipal Derivatives  
 16 business.

17                   45. Defendant XL Life Insurance & Annuity Company (“XL Life Insurance”)  
 18 is a subsidiary of XLAF maintaining its principal place of business in Schaumburg, Illinois.  
 19 During the Class Period, XL Life Insurance issued and sold Municipal Derivatives to Oakland  
 20 and/or members of the Class.

21                   46. Defendant XL Capital, Ltd. (“XL Capital”) is a foreign corporation  
 22 maintaining its principal place of business in Hamilton, Bermuda. During the Class Period, XL  
 23 Capital, either directly or through its affiliates Defendants Security Capital and XL Asset Funding  
 24 1, LLC issued and sold Municipal Derivatives to Oakland and/or members of the Class in the  
 25 United States.

26                   **Municipal Derivatives Broker Defendants**

27                   47. Defendant Cain Brothers & Company, LLC (“Cain”) is a Delaware limited  
 28 liability corporation with its principal place of business in New York, New York. During the

1 Class Period, Cain acted as a broker for Oakland and/or members of the Class in purchasing  
2 Municipal Derivatives from one or more of the Municipal Derivatives Seller Defendants.

3 a. Cain was subpoenaed by the SEC in connection with its  
4 investigation of anticompetitive practices in the Municipal Derivatives industry.

5 48. Defendant CDR Financial Products, Inc. (“CDR”) is a Delaware  
6 corporation maintaining its principal place of business at Beverly Hills, California. During the  
7 Class Period, CDR acted as a broker for Oakland and/or members of the Class in purchasing  
8 Municipal Derivatives from one or more of the Municipal Derivatives Seller Defendants.

9 a. CDR’s California offices were raided by the FBI in November,  
10 2006, at the start of the government’s investigation into anticompetitive conduct in the Municipal  
11 Derivatives market.

12 b. CDR has been the subject of a series of long-standing federal  
13 governmental investigations involving its dealings with other participants in the municipal  
14 derivatives market, including Defendant Bank of America.

15 49. Defendant Feld Winters Financial, LLC (“Feld Winters”), is a California  
16 limited liability corporation with its principal place of business in Sherman Oaks, California.  
17 During the Class Period, Feld Winters acted as a broker for Oakland and/or members of the Class  
18 in purchasing Municipal Derivatives from one or more of the Municipal Derivatives Seller  
19 Defendants.

20 a. Feld Winters was subpoenaed by the Justice Department in  
21 connection with its investigation of anticompetitive conduct in the Municipal Derivatives  
22 business.

23 50. Defendant George K. Baum & Company (“Baum”) is a Missouri  
24 corporation with its principal place of business in Kansas City, Missouri. During the Class  
25 Period, Baum acted as a broker for Oakland and/or members of the Class in purchasing Municipal  
26 Derivatives from one or more of the Municipal Derivatives Seller Defendants.

27 a. Baum was subpoenaed by the SEC in connection with its  
28 investigation of anticompetitive practices in the Municipal Derivatives industry.

b. Baum has been the target of previous governmental investigations related to its Municipal Derivatives business.

c. On November 10, 2006, Baum settled allegations with the IRS that it diverted profits from municipal bond deals. In one instance the IRS alleged that bidding was rigged in the selection of a GIC provider for a \$150 million loan pool underwritten by Baum in 1999 and issued by the Illinois Development Finance Authority.

51. Defendant Investment Management Advisory Group, Inc. (“IMAGE”) is a Pennsylvania corporation maintaining its principal place of business at Pottstown, Pennsylvania. During the Class Period, IMAGE acted as a broker for Oakland and/or members of the Class in purchasing Municipal Derivatives from one or more of the Municipal Derivatives Seller Defendants.

a. IMAGE's Pennsylvania offices were raided by the FBI in November, 2006, at the start of the government's investigation into anticompetitive conduct in the Municipal Derivatives market.

52. Defendant Morgan Keegan & Co., Inc. (“Morgan Keegan”), a subsidiary of Regions Financial Corp., is a Tennessee corporation maintaining its principal place of business in Memphis, Tennessee. During the Class Period, Morgan Keegan acted as a broker for Plaintiff and/or members of the Class in purchasing Municipal Derivatives from one or more of the Municipal Derivatives Seller Defendants.

a. Morgan Keegan has received a subpoena from the Securities and Exchange Commission in connection with the SEC's investigation into anticompetitive practices in the Municipal Derivatives industry.

53. Defendant PackerKiss Securities, Inc. (“PackerKiss”) is a Florida corporation maintaining its principal place of business in Delray Beach, Florida. During the Class Period, PackerKiss acted as a broker for Plaintiff and/or members of the Class in purchasing Municipal Derivatives from one or more of the Municipal Derivatives Seller Defendants.

1 54. Defendant Shockley Financial Corp. (“Shockley”), a subsidiary of NelNet  
2 Inc., is a corporation maintaining its principal place of business in Aurora, Colorado. During the  
3 Class Period, Shockley acted as a broker for Plaintiff and/or members of the Class in purchasing  
4 Municipal Derivatives from one or more of the Municipal Derivatives Seller Defendants.

5                   55.     Defendant Sound Capital Management, Inc. (“Sound Capital”) is a  
6 Minnesota corporation maintaining its principal place of business at Eden Prairie, Minnesota.  
7 During the Class Period, Sound Capital acted as a broker for Oakland and/or members of the  
8 Class in purchasing Municipal Derivatives from one or more of the Municipal Derivatives Seller  
9 Defendants.

10 a. Sound Capital's Minnesota offices were raided by the FBI in  
11 November, 2006, at the start of the government's investigation into anticompetitive conduct in the  
12 Municipal Derivatives market.

13                   56.     Defendant Winters & Co. Advisors, LLC (“Winters”) is a California  
14 limited liability company maintaining its principal place of business in Los Angeles, California.  
15 During the Class Period, Winters acted as a broker for Plaintiff and/or members of the Class in  
16 purchasing Municipal Derivatives from one or more of the Municipal Derivatives Seller  
17 Defendants.

## CO-CONSPIRATORS

19                   57. Various other persons, firms and corporations, not named as Defendants  
20 herein, have participated as co-conspirators with Defendants and have performed acts and made  
21 statements in furtherance of the conspiracy.

22                   58. Whenever in this Complaint reference is made to any act, deed or  
23 transaction of any corporation, the allegation means that the corporation engaged in the act, deed  
24 or transaction by or through its officers, directors, agents, employees or representatives while they  
25 were actively engaged in the management, direction, control or transaction of the corporation's  
26 business or affairs.

## **CLASS ACTION ALLEGATIONS**

59. Oakland brings this action on behalf of itself and as a class action under the provisions of Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the following Class:

All state, local or municipal Government Entities and private entities in the United States and its territories that purchased Municipal Derivatives directly from one or more of the Municipal Derivatives Seller Defendants and/or through one or more of the Derivatives Broker Defendants at any time from January 1, 1992 through December 31, 2007. Excluded from the Class are all federal governmental entities and instrumentalities of the federal government.

60. Oakland does not know the exact number of Class members because such information is in the exclusive control of Defendants. But due to the nature of the trade and commerce involved, Oakland believes that there are hundreds or thousands of Class members as described above, the exact number and their identities being known by Defendants.

61. The Class is so numerous and geographically dispersed that joinder of all members is impracticable.

62. There are questions of law and fact common to the Class, including:

a. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain or stabilize the effective prices of Municipal Derivatives sold in the United States;

b. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to rig bids for Municipal Derivatives sold in the United States;

c. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to allocate customers and the markets for Municipal Derivatives sold in the United States;

- d. The identity of the participants of the alleged conspiracy;
- e. The duration of the alleged conspiracy and the acts carried out by Defendants and their co-conspirators in furtherance of the conspiracy;

1 f. Whether the alleged conspiracy violated Section 1 of the Sherman  
2 Act, 15 U.S.C. § 1;

3 g. Whether the conduct of Defendants and their co-conspirators, as  
4 alleged in this Complaint, violated the California Cartwright Act, Cal. Bus. & Prof. Code §  
5 16720, *et seq.*;

6 h. Whether the conduct of Defendants and their co-conspirators, as  
7 alleged in this Complaint, violated the California Unfair Competition Law, Cal. Bus. & Prof.  
8 Code § 17200, *et seq.*;

9 i. Whether the conduct of Defendants and their co-conspirators, as  
10 alleged in this Complaint, caused injury to the business or property of the Oakland and the other  
11 members of the Class;

12 j. The effect of the alleged conspiracy on the effective prices of  
13 Municipal Derivatives sold in the United States during the Class Period;

14 k. Whether the Defendants and their co-conspirators fraudulently  
15 concealed the conspiracy's existence from the Oakland and the other members of the Class; and

16 l. The appropriate class-wide measure of damages.

17 63. Oakland is a member of the Class, Oakland's claims are typical of the  
18 claims of the Class members, and Oakland will fairly and adequately protect the interests of the  
19 Class. Oakland is a direct purchaser of Municipal Derivatives, and its interests are coincident  
20 with, and not antagonistic to, those of the other members of the Class.

21 64. Oakland is represented by counsel who are competent and experienced in  
22 the prosecution of antitrust and class action litigation.

23 65. The prosecution of separate actions by individual members of the Class  
24 would create a risk of inconsistent or varying adjudications, establishing incompatible standards  
25 of conduct for Defendants.

26 66. The questions of law and fact common to the members of the Class  
27 predominate over any questions affecting only individual members, including legal and factual  
28 issues relating to liability and damages.

1           67. A class action is superior to other available methods for the fair and  
2 efficient adjudication of this controversy. The Class is readily definable and is one for which  
3 records should exist. Prosecution as a class action will eliminate the possibility of repetitious  
4 litigation. Treatment as a class action will permit a large number of similarly situated persons to  
5 adjudicate their common claims in a single forum simultaneously, efficiently, and without the  
6 duplication of effort and expense that numerous individual actions would engender. This class  
7 action presents no difficulties in management that would preclude maintenance as a class action.

## TRADE AND INTERSTATE COMMERCE

9                   68. The activities of Defendants and their co-conspirators, as described in this  
10 Complaint, were within the flow of and substantially affected interstate commerce.

11                   69. During the Class Period, Defendants and their co-conspirators issued and  
12 sold substantial quantities of Municipal Derivatives, in a continuous and uninterrupted flow of  
13 interstate commerce to Government Entities located in states other than the states in which the  
14 Municipal Derivatives Seller Defendants issued and/or brokered these products.

15                   70. The conspiracy in which the Defendants and their co-conspirators  
16 participated had a direct, substantial, and reasonably foreseeable effect on United States  
17 commerce.

## FACTS

## The Market for Municipal Derivatives

20                   71.     Municipalities and state and local government agencies issue over \$2  
21     trillion worth of municipal bonds annually.

22           72. While the tax-free bonds are sold in contemplation of construction, public  
23 housing or other public-works projects, municipalities have in the last decade opted to invest the  
24 proceeds of the bond sales before these projects are even started, or to hedge the interest-rate risk  
25 associated with the issuance of large amounts of tax-exempt debt.

26                   73.     Municipal Derivatives have become an attractive investment vehicle for  
27 municipalities looking to park bond proceeds until the money raised from the sale is actually  
28 needed for capital projects, or to protect themselves from interest-rate risk associated with issuing

1 their tax-exempt bonds. There are roughly \$40 - \$60 billion in Municipal Derivatives created in  
2 the United States annually.

3           74. The market for Municipal Derivatives has become more concentrated since  
4 the late 1990's, with an increasingly smaller number of investment banks and bond insurers  
5 occupying the market.

6           75.     The Municipal Derivatives industry has been variously described by  
7 market participants as opaque, intertwined and interconnected, all characteristics which facilitate  
8 the type of illegal collusion alleged herein. The Municipal Derivatives market lacks transparency,  
9 and regulatory and private efforts to impose transparency have not been successful. On July 26,  
10 2007, the Chairman of the Securities and Exchange Commission delivered a white paper to  
11 Congress calling for improved oversight of the municipal securities market.

## The Competitive Bidding Process

13                   76. A wide variety of Municipal Derivatives are sold through competitive  
14 bidding undertaken by Government Entities and overseen by the Municipal Derivatives Brokers  
15 acting as their fiduciaries.

16                   77. The Competitive Bidding Process involving GICs is illustrative of the way  
17 many Government Entities purchase Municipal Derivatives, and indicative of the methods by  
18 which the Defendants have succeeded in manipulating these financial instruments pursuant to  
19 their bid-rigging and customer allocation conspiracy.

20           78.    Flush with proceeds from a muni bond sale, a Government Entity looks to  
21 invest in a GIC. The Government Entity will retain a GIC Broker to facilitate the acquisition of  
22 the contract. The Government Entities typically pay a fee to the GIC Broker for shopping for  
23 GIC Bids.

24                   79.     In the wake of the so-called “yield-burning” scandal of the 1980’s and  
25     1990’s – in which municipal bond issuers were sold overpriced investment vehicles or charged  
26     fees that acted to artificially reduce the yields on their underlying bond issues – the IRS  
27     promulgated regulations meant to ensure that Government Entities were purchasing Municipal  
28     Derivatives at a fair market value price.

1           80.     IRS tax-exempt bond regulations (here, “Treasury Regulations”) stipulate  
2 that if Government Entities invest the proceeds of bond sales, the yield of the investment cannot  
3 exceed the yield of the municipal bond itself. Any interest exceeding the bond rate of the tax-  
4 exempt bond investments is required to be rebated to the IRS, absent an exception.

5           81.     To satisfy these so-called arbitrage rules, any given GIC is structured to  
6 limit the rate of interest that a municipality can earn on the GIC to less than the yield of the bond  
7 whose issuance financed the investment in the GIC in the first place. The Rate of Return any  
8 particular Municipal Derivatives Seller can offer a Government Entity is therefore effectively  
9 capped.

10           82.     Treasury Regulations related to Municipal Derivatives are aimed at  
11 ensuring that Government Entities get competitive bids on the interest rate a Municipal  
12 Derivatives Seller pays the municipalities under the terms of the GIC. According to Treasury  
13 Regulations, a GIC is sold at “fair market value” if the bidding process satisfies certain  
14 procedures. Essentially, there should be at least three reasonably competitive bids solicited from  
15 Municipal Derivatives Sellers, and all of these bidders must have an equal opportunity to bid –  
16 that is, no bidder can have a “last look” to review other bids before bidding on the contract.  
17 Treasury Regulations state that a “reasonably competitive” Municipal Derivatives Seller is an  
18 entity with “an established industry reputation” as a competitive Municipal Derivatives Seller.  
19 The IRS may levy penalties under Section 6700 of the tax code when it determines bid-rigging  
20 has occurred.

21           83.     The Municipal Derivatives Broker, acting as the fiduciary to the  
22 Government Entity, oversees the solicitation and placement of the bids from Municipal  
23 Derivatives Sellers.

24           84.     After hiring a Municipal Derivatives Broker to oversee the solicitation of  
25 GIC Bids, Government Entities buy a GIC from a Municipal Derivatives Seller pursuant to the  
26 Competitive Bidding Process.

27  
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1           85. The parties to a GIC are the Municipal Derivatives Seller, acting as the  
2 Counterparty and the Government Entity. The Municipal Derivatives Seller now acting as the  
3 Counterparty supplies the most salient term, namely the Rate of Return on the investment.

4           86. The GIC entitles the Government Entity to receive the return of the  
5 Government Entity's initial principal plus guaranteed interest at a specified Rate of Return, and to  
6 withdraw principal from the GIC as permitted.

7           87. Generally, a Government Entity will acquire a GIC in order to invest funds  
8 on deposit in a debt service reserve fund or construction fund until it needs to use such funds to  
9 service debt or fund the payment of project expenses in accordance with the underlying bond  
10 documents.

11           88. In exchange for the payment of a guaranteed Rate of Return to the  
12 Government Entity, and the full repayment of all principal on a date certain, the Municipal  
13 Derivatives Counterparty is allowed to invest the principal furnished by the Government Entity.  
14 The Municipal Derivatives Counterparty's profits are made on the spread between the Rate of  
15 Return the Municipal Derivatives Counterparty offers to the Government Entity and the returns  
16 the GIC's invested principal makes for the Municipal Derivatives Counterparty pursuant to  
17 whatever investment the Municipal Derivatives Counterparty chooses.

18           89. The Competitive Bidding Process outlined in the Treasury Regulations  
19 mandates that any Government Entity seeking to buy a GIC receive at least three bona fide Bids  
20 from Municipal Derivatives Sellers. Each bidder typically faxes its Bid into the Municipal  
21 Derivatives Broker, which collects the ostensibly competitive Bids and informs the Government  
22 Entity of the range of Bids, the identity of the Municipal Derivatives Sellers submitting them, and  
23 the time each Bid was received.

24           90. Each GIC Bid includes a statement that the Bid was determined without  
25 regard to any other formal or informal agreement with another Municipal Derivatives Seller, and  
26 that the Bid was not submitted solely as a so-called "courtesy" Bid.

27  
28

1                   91.     The Municipal Derivatives Seller that offers the highest-yielding Rate of  
2     Return is selected as the Counterparty, often within hours of the close of the Competitive Bidding  
3     Process.

4                   92.       The vast majority of GICs purchased in the United States are purchased  
5 pursuant to the competitive bidding process established by Treasury Regulation §1.148-5 *et seq.*,  
6 which has been in effect since approximately 1993, and which are only some of the Treasury  
7 Regulations governing the reinvestment of municipal bond proceeds.

11                   94. Even sophisticated Government Entities (who rely in large part on the  
12 Municipal Derivatives Broker Defendants acting as their fiduciaries) may not know that they are  
13 the target of the bid-rigging and customer allocation conspiracy alleged herein.

## The Bid-Rigging Conspiracy

15                   95.     The potential for bid-rigging in any given GIC transaction exists in the  
16 exploitation of the Rate of Return that a particular GIC Seller is willing to offer to a Government  
17 Entity looking to invest its bond proceeds. The Municipal Derivatives Seller Defendants, aided  
18 by the Municipal Derivatives Broker Defendants, have turned the Treasury Regulations into a  
19 travesty by exploiting Government Entities' need for reinvestment of bond proceeds.

24                   97.     Bid-rigging of GIC transactions, which are illustrative of anticompetitive  
25 conduct in the overall market for Municipal Derivatives, typically occurs when only one firm  
26 submits a reasonable, financially viable Bid, and the other two or more bidders submit Bids  
27 offering unjustifiably low Rates of Return, or simply refuse (or “pass”) on the opportunity to bid.

1           98.    Other times, bids are late or incomplete, leaving only one viable bid for the  
2 Government Entity to choose from.

3           99.    Although at least one market participant has recently attempted to add  
4 transparency to the market by developing a web-based bid auction service, GIC Bids are  
5 traditionally done over the phone or sent to Municipal Derivatives Brokers via fax, facilitating  
6 collusion of the type alleged herein.

7           100.   At least one investment bank has provided the government with transcripts  
8 of telephone conversations that indicated that the investment bank and other market participants  
9 were involved in anticompetitive conduct on Municipal Derivatives sold to Government Entities.

10           101.   While the winning bid may be financially viable in light of the Treasury  
11 Regulations' restrictions on bond issue reinvestment, it is not necessarily at fair market value, and  
12 does not necessarily provide the Government Entity with the best possible Rate of Return on the  
13 investment it is seeking by buying the GIC.

14           102.   The unrealistically low bids – dubbed “courtesy bids” because they are  
15 provided solely as a courtesy so that another Municipal Derivatives Seller can win on a bid that is  
16 below fair market value – are often more than 100 basis points below the winning bid. As Mark  
17 Scott, director of the IRS tax exempt bond office, stated in *The Bond Buyer* on January 6, 2005,  
18 “When a bid is 100 to 150 basis points below the market and there is no justification for that  
19 being so low, one of the assumption you can draw is that there are courtesy bids being provided.”

20           103.   Often the winning bid is the only one high enough to make the GIC work  
21 and be a worthwhile reinvestment vehicle for the Government Entity.

22           104.   According to a speaker at a recent teleconference organized by the National  
23 Association of Bond Lawyers and reported in *The Bond Buyer* on February 8, 2007, the use of  
24 courtesy bids in GICs transactions is quite prevalent. IRS officials have stated that bid-rigging is  
25 a wide and pervasive practice in GIC transactions and have uncovered numerous transactions  
26 involving rigged bids and customer allocation. A number of these transactions involve both the  
27 Municipal Derivatives Seller Defendants and the Municipal Derivatives Broker Defendants.

1                   105. Municipal Derivatives Brokers also routinely offer favored Municipal  
2 Derivatives Sellers with an illegal “last look” at their competitors’ submitted bids, or even  
3 exclude potential bidders without the Government Entity’s knowledge.

4                   106. Evidence seized by the federal government as part of its wide-ranging  
5 investigation, including taped telephone conversations, revealed instances in which the winning  
6 bidder was given a “last look” at other bids, or bidders were asked to bid low in exchange for  
7 preferential treatment in later deals.

8                   107. As part of its ongoing investigation into these practices, the IRS also  
9 uncovered several bidding schemes that allowed the Municipal Derivatives Seller to underpay for  
10 the GIC – that is, provide a less than fair market value interest rate – and then overpay the  
11 Municipal Derivatives Broker for other investment agreements or remarketing fees associated  
12 with the GIC, a form of kickback that may jeopardize the tax-exempt status of the underlying  
13 bond or result in excess “arbitrage” paid to the federal government.

14                   **Governmental Investigations of Defendants’ Conspiracies**

15                   108. On Wednesday, November 15, 2006, the FBI began a series of nationwide  
16 raids on numerous Municipal Derivatives Brokers, including the Municipal Derivatives Broker  
17 Defendants. The FBI raids coincided with the service of nearly two dozen subpoenas on other  
18 participants in the Municipal Derivatives business, including the Municipal Derivatives Sellers  
19 named as Defendants herein.

20                   109. The DOJ’s Antitrust Division served subpoenas from a grand jury sitting in  
21 the Southern District of New York, and a number of the targeted companies revealed that they  
22 had also received subpoenas from the Securities and Exchange Commission in connection with a  
23 parallel civil probe.

24                   110. The Antitrust Division is conducting a criminal probe into anticompetitive  
25 conduct, including bid-rigging and customer allocation, and the DOJ is contemplating charging  
26 market participants with continuing acts of conspiracy, and (as detailed above) have targeted a  
27 number of individuals for indictment.

28

1           111. The SEC probe, entitled *In the Matter of Certain GIC Brokers*, is focused  
2 on securities fraud in municipal bond deals undertaken since 2000. Upon information and belief,  
3 the SEC is investigating Municipal Derivatives Sellers' non-disclosure of an extensive scheme  
4 involving kickbacks to Municipal Derivatives Brokers, a scheme that acted as a necessary  
5 corollary to the conspiracy alleged herein. Such non-disclosure of kickbacks to Municipal  
6 Derivatives Brokers jeopardizes the tax-exempt status of Government Entities' bonds, or may  
7 subject them to potentially excessive arbitrage payments to the federal government.

8           112. The DOJ and SEC investigations follow a lengthy and continuing probe by  
9 the IRS' Criminal Investigation Division and its Tax-Exempt Bond office.

10           113. The Justice Department subpoenas asked for documents, e-mails, tapes or  
11 notes of phone conversations and other information regarding "contracts involving the investment  
12 or reinvestment of the proceeds of tax-exempt bond issues and qualified zone academy bonds [as  
13 well as] related transactions involving the management or transferal of the interest rate risk  
14 associated with those bonds, including but not limited to [GICs], forward supply, purchase or  
15 delivery agreements; repurchase agreements; swaps; options; and swaptions."

16           114. The subpoenas also demanded organizational charts, phone directories, and  
17 lists of all employees involved with Municipal Derivatives, in addition to all documents  
18 associated with what the subpoenas apparently described as "relevant municipal contracts  
19 awarded or intended to be awarded pursuant to competitive bidding," which would include  
20 invitations to bid; solicitations, notices or RFPs issued to any provider by municipal clients;  
21 actual or proposed responses to those RFPs; and amounts and prices bid for the various  
22 investment vehicles.

23           115. On February 9, 2007, Defendant Bank of America announced that it  
24 entered into a leniency agreement with the Justice Department in connection with what it  
25 described as "the Department's investigation into anticompetitive practices in the municipal  
26 derivatives industry."

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1                   116. Defendant Bank of America noted that the amnesty grant “was the result of  
 2 the company voluntarily providing information to the Department before the Department began  
 3 its investigation, as well as the company’s continuing cooperation.”

4                   117. Entry into the DOJ’s amnesty program follows presentation of evidence of  
 5 a *per se* antitrust violation on behalf of the applicant, in this instance Defendant Bank of America.  
 6 Evidence of Defendant Bank of America’s dealings, including recorded telephone conversations  
 7 of traders giving courtesy bids, was one of the key galvanizers of the criminal investigation. Key  
 8 derivatives officials at the bank were placed on “administrative leave,” including Dean Pinard, the  
 9 head of BOA’s derivatives department.

10                  118. Defendant Bank of America also disclosed that it had reached a \$14.7  
 11 million settlement with the IRS relating to the company’s role in providing GICs and other  
 12 agreements to municipal bond issuers.

13                  119. As detailed in Paragraphs 16 to 53 above, a number of individuals have  
 14 been targeted for indictment by the Department of Justice, and a number of Municipal Derivatives  
 15 Seller Defendants are facing civil and administrative actions from the SEC in relation to that  
 16 agency’s investigation into anticompetitive practices in the Municipal Derivatives market.

17                  **FRAUDULENT CONCEALMENT**

18                  120. Oakland and members of the Class had no knowledge of the agreement,  
 19 contract, combination, and conspiracy alleged in this Complaint, or of any facts that might have  
 20 led to the discovery thereof, until shortly before the filing of this action. Oakland could not have  
 21 discovered the agreement, contract, combination, and conspiracy at an earlier date by the exercise  
 22 of reasonable diligence because of the deceptive practices and methods of secrecy employed by  
 23 Defendants and their co-conspirators to avoid detection of, and fraudulently conceal, their  
 24 agreement, contract, combination, and conspiracy. These methods of secrecy included, but were  
 25 not limited to, secret meetings, misrepresentations concerning the reasons for price increases,  
 26 encouraging witnesses to give false testimony to the grand jury and government officials, and  
 27 destroying or concealing evidence of their illegal conduct.

28

1                   121. The affirmative acts of the Defendants alleged herein, including acts in  
2 furtherance of the conspiracy, were wrongfully concealed and carried out in a manner that  
3 precluded detection.

4                   122. By their very nature, Defendants' bid-rigging and customer-allocation  
5 conspiracy was inherently self-concealing. The Municipal Derivatives industry is not exempt  
6 from antitrust regulation, and thus Oakland reasonably considered it to be a well-regulated  
7 competitive industry.

8                   123. In the context of the circumstances surrounding Defendants' pricing  
9 practices, Defendants' acts of concealment were more than sufficient to preclude suspicion by a  
10 reasonable person that defendants' bidding and pricing were conspiratorial. Accordingly, a  
11 reasonable person under the circumstances would not have been alerted to investigate the  
12 legitimacy of Defendants' proffered Municipal Derivatives prices.

13                   124. Oakland and members of the Class could not have discovered the alleged  
14 contract, conspiracy, or combination at an earlier date by the exercise of reasonable diligence  
15 because of the deceptive practices and techniques of secrecy employed by Defendants and their  
16 co-conspirators to avoid detection of, and fraudulently conceal, their contract, combination or  
17 conspiracy. Such practices are especially prevalent in bid-rigging and customer-allocation  
18 conspiracies such as the one alleged herein.

19                   125. Because the alleged conspiracy was both self-concealing and affirmatively  
20 concealed by Defendants and their co-conspirators, Oakland and members of the Class had no  
21 knowledge of the alleged conspiracy, or of any facts or information that would have caused a  
22 reasonably diligent person to investigate whether a conspiracy existed.

23                   126. As a result of Defendants' fraudulent concealment of their conspiracy, the  
24 running of any statute of limitations has been tolled with respect to any claims that Oakland and  
25 members of the Class have alleged in this Complaint.

26                   127. Throughout the Class Period, Defendants and their co-conspirators  
27 affirmatively and fraudulently concealed their unlawful conduct.

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1                   128. Oakland and the Class members did not discover, nor could have  
2 discovered through reasonable diligence, that Defendants and their co-conspirators were violating  
3 the antitrust laws until before this litigation was commenced because Defendants and their co-  
4 conspirators used and continue to use deceptive and secret methods to avoid detection and to  
5 affirmatively conceal their violations. Nor could Oakland or the Class members have discovered  
6 the violations earlier than that time because Defendants and their co-conspirators conducted their  
7 conspiracy secretly, concealed the nature of their unlawful conduct and acts in furtherance  
8 thereof, and fraudulently concealed their activities through various other means and methods  
9 designed to avoid detection.

10                  129. Defendants and their co-conspirators engaged in a successful  
11 anticompetitive conspiracy concerning Municipal Derivatives, which they affirmatively  
12 concealed, at least in the following respects:

13                  a. By meeting secretly to discuss effective prices, bids, and customers  
14 and markets of Municipal Derivatives in the U.S.;

15                  b. By agreeing among themselves not to discuss publicly, or otherwise  
16 reveal, the nature and substance of the acts and communications in furtherance of their illegal  
17 scheme;

18                  c. By intentionally creating the false appearance of competition by  
19 staging sham auctions in which the results were pre-determined; and

20                  d. By furnishing each other participant in all given bidding sessions  
21 with illegal “last looks” at their ostensible competitors’ bids.

22                  130. Oakland and Class members did not know, and could not have discovered  
23 through reasonable diligence, that the auctions arranged by the Derivatives Broker Defendants  
24 were sham, and that rather than being competitive, the results of the auctions were rigged.

25                  131. As a result of Defendants’ fraudulent concealment, all applicable statutes  
26 of limitations affecting the Oakland’s and the Class’ claims have been tolled.

## **CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**  
(Violation of Section 1 of the Sherman Act)

132. From as early as January 1, 1992 through the present, Defendants and their co-conspirators engaged in a continuing contract, combination or conspiracy with respect to the sale of Municipal Derivatives in the United States in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

133. The contract, combination or conspiracy consisted of an agreement among the Defendants and their co-conspirators to fix, raise, stabilize or maintain at artificially supracompetitive prices for Municipal Derivatives and to rig bids and to allocate customers and markets for Municipal Derivatives in the United States.

134. In formulating and effectuating this conspiracy, Defendants and their co-conspirators did those things that they combined and conspired to do, including:

a. participating in meetings and conversations among themselves during which they agreed to price Municipal Derivatives at certain levels, and otherwise to fix, increase, maintain or stabilize effective prices paid by Oakland and members of the Class with respect to Municipal Derivatives sold in the United States and to rig bids and allocate customers and markets of Municipal Derivatives;

b. arranging sham auctions among the Municipal Derivatives Seller Defendants that were designed to create the appearance of competition for the sale of Municipal Derivatives, but in which the result had been agreed upon among the Defendants and co-conspirators;

c. allocating customers and markets for Municipal Derivatives in the United States in furtherance of their agreements;

d. rigging bids for Municipal Derivatives sold in the United States;  
and

e. participating in meetings and conversations among themselves to implement, adhere and police the agreements they reached.

1                   135. Defendants and their co-conspirators engaged in the actions described  
2 above for the purpose of carrying out their unlawful agreements to fix, maintain, decrease or  
3 stabilize prices and to allocate customers and markets with respect to Municipal Derivatives.

4                   136. The Defendants' unlawful contract, combination or conspiracy has had at  
5 least the following effects:

6                   a.       Effective prices paid by Oakland and the members of the Class with  
7 respect to Municipal Derivatives were fixed, stabilized and maintained at artificially low and non-  
8 competitive levels in the United States;

9                   b.       Bids for Municipal Derivatives sold in the United States were  
10 rigged;

11                   c.       Customers and markets for Municipal Derivatives were allocated  
12 among Defendants and their co-conspirators;

13                   d.       Oakland and the other members of the Class paid more or received  
14 lower Rates of Return for the Municipal Derivatives they purchased than they would have paid in  
15 a competitive marketplace, unfettered by Defendants' and their co-conspirators' collusive and  
16 unlawful activities;

17                   e.       Price competition with respect to the sale of Municipal Derivatives  
18 was restrained, suppressed and eliminated in the United States; and

19                   f.       As a direct and proximate result of the illegal combination, contract  
20 or conspiracy, Oakland and the members of the Class have been injured and financially damaged  
21 in their businesses and property, in amounts to be determined, by being deprived of the highest-  
22 allowable interest rate on its Municipal Derivatives investment. The courtesy (sometimes also  
23 called complimentary) bids submitted by the Municipal Derivatives Sellers defrauded the  
24 Government Entities by creating the appearance of competition to conceal the secretly deflated  
25 interest rate offers.

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**SECOND CLAIM FOR RELIEF**  
**(Violation of the California Cartwright Act, Cal. Bus. & Prof. Code section 16720, et seq.)**

137. Oakland, on behalf of itself and all others similarly situated, realleges and incorporates, as if fully alleged herein, each of the allegations contained in the preceding paragraphs of this Complaint, and further alleges against Defendants as follows.

138. The unlawful conduct of Defendants, including the Defendants headquartered or based in California, was centered in and carried out within California, and Defendants' conduct within California injured all members of the Class throughout the United States. Therefore, this claim for relief under California law is brought on behalf of all members of the Class, whether or not they are California residents.

139. Beginning at least as early as January 1, 1992 through the present, the exact dates being unknown to Oakland, Defendants and various co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce described above in violation of Section 16720, California Business and Professional Code. Defendants, and each of them, have acted in violation of Section 16720 to fix, raise, stabilize and maintain prices of, allocate markets and rig bids for, Municipal Derivatives.

140. For the purpose of forming and implementing the alleged combinations, trusts, agreements, understandings and concert of action, Defendants and their co-conspirators did those things they conspired to do, including but not limited to the acts alleged above, including actions:

a. to fix, raise, maintain and stabilize the price of Municipal Derivatives;

b. to allocate markets for Municipal Derivatives amongst themselves;  
and

c. to submit rigged bids for Municipal Derivatives.

141. In formulating and carrying out the alleged combinations, trusts, agreements, understandings and concert of action, Defendants and their co-conspirators engaged in anticompetitive activities, the purpose and effect of which were (a) to artificially raise, fix,

1 maintain, or stabilize the prices of Municipal Derivatives; (b) to allocate among themselves  
 2 Municipal Derivatives markets and customers; and (c) to facilitate, effectuate, and implement the  
 3 contract, combination, and conspiracy.

4 142. The combination and conspiracy alleged herein has had the following  
 5 effects, among others:

6 a. Price competition in the sale of Municipal Derivatives has been  
 7 restrained, suppressed and/or eliminated in the State of California and throughout the United  
 8 States;

9 b. Prices for Municipal Derivatives sold by Defendants and their  
 10 co-conspirators have been fixed, raised, maintained and stabilized at artificially high, non-  
 11 competitive levels in the State of California and throughout the United States; and

12 c. Those who purchased Municipal Derivatives from Defendants and  
 13 their co-conspirators have been deprived of the benefit of free and open competition.

14 143. As a direct and proximate result of the illegal combination, trust,  
 15 agreement, understanding and concert of action, Oakland and the members of the Class have been  
 16 injured in their business and property in that they paid more for Municipal Derivatives than they  
 17 otherwise would have paid in the absence of Defendants' unlawful conduct.

18 144. As a result of Defendants' violation of Section 16720 of the California  
 19 Business and Professions Code, Oakland seeks treble damages and the costs of suit, including  
 20 reasonable attorneys' fees, pursuant to Section 16750(a) of the California Business and  
 21 Professions Code.

22 **THIRD CLAIM FOR RELIEF**  
 23 **(Violation of the California Unfair Competition Law,  
 24 Cal. Bus. & Prof. Code section 17200, *et seq.*)**

25 145. Oakland, on behalf of itself and all others similarly situated, realleges and  
 26 incorporates, as if fully alleged herein, each of the allegations contained in the preceding  
 paragraphs of this Complaint, and further alleges against Defendants as follows.

27 146. Defendants' unlawful conduct was centered in, carried out and perfected  
 28 mainly within the State of California, and Defendants' conduct within California injured all

1 members of the Class throughout the United States. Therefore, this claim for relief under  
2 California law is brought on behalf of all members of the Class, whether or not they are  
3 California residents.

4 147. Beginning at least as early as January 1, 1992 and continuing to the  
5 present, the exact dates being unknown to Oakland, Defendants committed acts of unfair  
6 competition, as defined by Sections 17200, *et seq.* of the California Business and Professions  
7 Code, commonly known as the Unfair Competition Law, by engaging in the acts and practices  
8 specified above.

9 148. Oakland and the members of the Class bring this claim pursuant to  
10 Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution  
11 and/or disgorgement from these Defendants for acts, as alleged herein, that violate the Unfair  
12 Competition Law.

13 149. Defendants' acts, omissions, misrepresentations, practices and non-  
14 disclosures, as alleged herein, constitute a common course of conduct of unfair competition by  
15 means of unfair, unlawful and/or fraudulent business acts or practices within the meaning of  
16 California Business and Professions Code, Section 17200, *et seq.*, in that, for example:

17 a. the violations of Section 16720, *et seq.*, of the California Business  
18 and Professions Code, set forth above;

19 b. the acts described above violate the Sherman Act, 15 U.S.C. § 1;

20 c. Defendants' acts, omissions, misrepresentations, practices and  
21 nondisclosures, as described above, whether or not in violation of Section 16720, *et seq.* of the  
22 California Business and Professions Code, and whether or not concerted or independent acts, are  
23 otherwise unfair, unconscionable, unlawful or fraudulent;

24 d. Defendants' act and practices are unfair to consumers of Municipal  
25 Derivatives in the State of California and throughout the United States, within the meaning of  
26 Section 17200, California Business and Professions Code; and

27 e. Defendants' acts and practices are fraudulent or deceptive within  
28 the meaning of Section 17200 of the California Business and Professions Code.

1                   150. Oakland and each of the Class members are entitled to full restitution  
 2 and/or disgorgement of all revenues, earnings, profits, compensation and benefits which may  
 3 have been obtained by Defendants as a result of such business acts or practices.

4                   151. The unlawful and unfair business practices of Defendants, and each of  
 5 them, as described above, have caused Oakland and the members of the Class to pay supra-  
 6 competitive and artificially-inflated prices for Municipal Derivatives. Oakland and the members  
 7 of the class suffered injury in fact and lost money or property as a result of such unfair  
 8 competition.

9                   152. The conduct of Defendants as alleged in this Complaint violates  
 10 Section 17200 of the California Business and Professions Code.

11                   153. As alleged in this Complaint, Defendants and their co-conspirators have  
 12 been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair  
 13 competition. Oakland and the members of the Class are accordingly entitled to equitable relief  
 14 including restitution and/or disgorgement of all revenues, earnings, profits, compensation and  
 15 benefits which may have been obtained by Defendants as a result of such business practices,  
 16 pursuant to the California Business and Professions Code, Sections 17203 and 17204.

17                   **PRAYER FOR RELIEF**

18                   WHEREFORE, the Plaintiff prays for relief as follows:

19                   1. That the Court determine that this action may be maintained as a class  
 20 action under Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that Oakland be  
 21 certified as a class representative and Oakland's counsel be appointed as counsel for the Class;

22                   2. That the unlawful contract, combination or conspiracy alleged be adjudged  
 23 and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of the  
 24 Sherman Act and Section 16720, *et seq.*, of the California Business & Professions Code (the  
 25 Cartwright Act);

26                   3. That the unlawful contract, combination or conspiracy alleged be adjudged  
 27 and decreed to be unfair, fraudulent, and illegal in violation of Section 17200, *et seq.*, of the  
 28 California Business & Professions Code (the Unfair Competition Law);

1                   4.       That Oakland and the Class recover damages and restitution, as provided  
2 by law, determined to have been sustained as to each of them, in an amount to be trebled in  
3 accordance with the antitrust laws, and that judgment be entered against defendants on behalf of  
4 Oakland and of the Class;

5                   5.       That Oakland and the Class recover their costs of the suit, including  
6 attorneys' fees, as provided by law; and

7                   6.       For such other and further relief as is just under the circumstances.

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**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial as to all issues triable by a jury.

Dated: April \_\_, 2008

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